



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

VS-5

NOTICE OF ALLOWANCE AND ISSUE FEE DUE

IM22/0321

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APPLICATION NO.	FILING DATE	TOTAL CLAIMS	EXAMINER AND GROUP ART UNIT	DATE MAILED
09/368,452	08/03/99	034	CAND, M	1761 03/21/00
First Named Applicant	GUTZMANN, 35 USC 154(b) term ext. = 0 Days.			

TITLE OF INVENTION TREATMENT OF MEAT PRODUCTS

ATTY'S DOCKET NO.	CLASS-SUBCLASS	BATCH NO.	APPLN. TYPE	SMALL ENTITY	FEE DUE	DATE DUE
1	163.1239US11	426-321.000	J90 UTILITY	NO	\$1210.00	06/21/00

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED.

THE ISSUE FEE MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED.

HOW TO RESPOND TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.
If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

- A. If the status is changed, pay twice the amount of the FEE DUE shown above and notify the Patent and Trademark Office of the change in status, or
- B. If the status is the same, pay the FEE DUE shown above.

If the SMALL ENTITY is shown as NO:

- A. Pay FEE DUE shown above, or
- B. File verified statement of Small Entity Status before, or with, payment of 1/2 the FEE DUE shown above.

II. Part B-Issue Fee Transmittal should be completed and returned to the Patent and Trademark Office (PTO) with your ISSUE FEE. Even if the ISSUE FEE has already been paid by charge to deposit account, Part B Issue Fee Transmittal should be completed and returned. If you are charging the ISSUE FEE to your deposit account, section "4b" of Part B-Issue Fee Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give application number and batch number.
Please direct all communications prior to issuance to Box ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PATENT AND TRADEMARK OFFICE COPY

Notice of Allowability

Application No.
09/368,452

Applicant(s)
GUTZMANN ET AL.

Examiner
Milton I. Cano

Group Art Unit
1761



All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance and Issue Fee Due or other appropriate communication will be mailed in due course.

☒ This communication is responsive to Terminal Disclaimer filed on March 16, 2000

☒ The allowed claim(s) is/are 1-24, 37, 39-43 and 45-48 (renumbered 1-34 respectively)

☐ The drawings filed on _____ are acceptable.

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

A SHORTENED STATUTORY PERIOD FOR RESPONSE to comply with the requirements noted below is set to EXPIRE **THREE MONTHS** FROM THE "DATE MAILED" of this Office action. Failure to timely comply will result in ABANDONMENT of this application. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

☐ Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL APPLICATION, PTO-152, which discloses that the oath or declaration is deficient. A SUBSTITUTE OATH OR DECLARATION IS REQUIRED.

☐ Applicant MUST submit NEW FORMAL DRAWINGS

☐ because the originally filed drawings were declared by applicant to be informal.

☐ including changes required by the Notice of Draftsperson's Patent Drawing Review, PTO-948, attached hereto or to Paper No. _____.

☐ including changes required by the proposed drawing correction filed on _____, which has been approved by the examiner.

☐ including changes required by the attached Examiner's Amendment/Comment.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the reverse side of the drawings. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

☐ Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Any response to this letter should include, in the upper right hand corner, the APPLICATION NUMBER (SERIES CODE/SERIAL NUMBER). If applicant has received a Notice of Allowance and Issue Fee Due, the ISSUE BATCH NUMBER and DATE of the NOTICE OF ALLOWANCE should also be included.

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

☒ Interview Summary, PTO-413

☒ Examiner's Amendment/Comment

☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

☒ Examiner's Statement of Reasons for Allowance

EXAMINER'S AMENDMENT

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-24, drawn to a method of treating a meat to reduce a microbial population, classified in class 426, subclass 235.
 - II. Claims 25-36, drawn to an antimicrobial composition for cleaning and sanitizing meat product, classified in class 424, subclass 405.
 - III. Claims 37-42, drawn to a method of treating a meat product to reduce a microbial population, classified in class 426, subclass 335.
 - IV. Claims 43-48, drawn to a method of treating a meat product to reduce a microbial population, classified in class 426, subclass 335.
2. The inventions are distinct, each from the other because of the following reasons:
3. Inventions II and I, III, IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the product as claimed can be used in a materially different process of using that product such as cleaning and sanitizing surfaces of product producing machines.
4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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5. During a telephone conversation with Mr. Mark DiPietro on March 16, 2000 a provisional election was made with traverse to prosecute the invention of Groups I, III and IV claims 1-24 and 37-48. Affirmation of this election must be made by applicant in replying to this Office action. Claims 25-36 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,010,729. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims call for the treatment of a meat product which fall within the scope of the '729.

9. Claims 37-48 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 37, 39-43 and 45-48 of copending Application No. 09/419019. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims call for the treatment of a meat product which fall within the scope of the '019 application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Terminal Disclaimer

10. The terminal disclaimer filed on March 16, 2000 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Pat. No. 6,010,729 and the patent no. assigned to Application Serial 09/419,019 has been reviewed and is accepted. The terminal disclaimer has been recorded.

11. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Mark DiPietro on March 16, 2000.

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Group Art Unit: 1761

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12. The application has been amended as follows:
Please amend the claims below as follows:

1. (Amended) A method of treating a meat product to reduce a microbial population in the meat product, the method comprising the steps of:

(a) [treating] applying to said meat product [with] an antimicrobial composition comprising:

(I) [an effective antimicrobial amount comprising] at least 2 ppm of one or more mono- or di-peroxycarboxylic acids having up to 12 carbon atoms; and

(ii) [an effective amount antimicrobial amount comprising] at least 20 ppm of one or more carboxylic acids having up to 18 carbon atoms; [and

(b)] wherein said composition is applied in an amount and time sufficient to reduce [reducing] the microbial population.

Please cancel claims 25-36 directed to a non-elected invention with traverse.

2737. (Amended) A method of treating a meat product to reduce a microbial population in the meat product, the method comprising the steps of:

[(a)] spraying an aqueous antimicrobial treatment composition onto said meat product at a pressure of at least 50 psi at a temperature of up to about 60° C resulting in a contact time of at least 30 seconds, the antimicrobial composition comprising [an effective antimicrobial amount comprising least 2 ppm of one or more carboxylic acid, peroxycarboxylic acid or mixtures thereof] at least 2 ppm of one or more peroxycarboxylic acids having up to 12 carbon atoms; and at least 20 ppm of one or more carboxylic acids having up to 18 carbon atoms; and

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cont.

[(b)] achieving at least a one log₁₀ reduction in the microbial population.

Please cancel claim 38.

30/43. (Amended) A method of treating a meat product to reduce a microbial population in the meat product, the method comprising the steps of:

placing the meat product in a chamber at atmospheric pressure;

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filling the chamber with condensing steam comprising an antimicrobial composition for a short duration said composition comprising, at least 2 ppm of one or more peroxycarboxylic acids having up to 12 carbon atoms; and at least 20 ppm of one or more carboxylic acids having up to 18 carbon atoms; and

quickly venting and cooling the chamber to prevent browning of the meat product; wherein the duration of the steaming step is [thermal process may be] from about 5 seconds to about 30 seconds and the chamber temperature [may reach] is from about 50° C to about 93° C .

Please cancel claim 44.

Claim 45, line 1: change "44" to --43-- therefor.

Claim 46, line 1: change "44" to --43-- therefor.

Claim 47, line 1: change "44" to --43-- therefor.

Claim 48, line 1: change "44" to --43-- therefor.

13. The following is an examiner's statement of reasons for allowance: the prior art of record fails to teach or suggest the steps of applying to the carcass an antimicrobial composition comprising:

(I) at least 2 ppm of one or more mono- or di-peroxycarboxylic acids having up to 12 carbon atoms; and


(ii) at least 20 ppm of one or more carboxylic acids having up to 18 carbon atoms.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton I. Cano whose telephone number is (703) 308-3959. The examiner can normally be reached on Monday-Thursday from 7:30 AM to 5:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Gabrielle Brouillette, can be reached on (703) 308-0756. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.

March 20, 2000


Milton I. Cano
Primary Examiner
Group 1760